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BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION III

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In the Matter of:

Delaware Department of Transportation
Dover, Delaware

Respondent.

ADMINISTRATIVE ORDER
ON CONSENT

Docket No. CWA-03-2014-0232DN

I. PRELIMINARY STATEMENT and STATUTORY AUTHORITY

1. EPA has made the following findings of fact and issues this Administrative Order on Consent (Consent Order) pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency (EPA) under Section 309(a) of the Clean Water Act (CWA or Act), 33 U.S.C. § 1319(a). This authority has been delegated by the Administrator to the Regional Administrator of EPA Region III, and further delegated to the Director, Water Protection Division, Region III.

2. Section 309 of the Act, 33 U.S.C. § 1319(a), provides, *inter alia*, that whenever on the basis of any information available to him the Administrator finds that any person is in violation of any permit condition or limitation implementing certain CWA sections in a permit issued under Section 402 of the Act, 33 U.S.C. § 1342, he shall issue an Order requiring such person to comply with such section or requirement.

II. FINDINGS of FACT and CONCLUSIONS OF LAW

3. Delaware Department of Transportation (DelDOT), or "Respondent", is a "person" within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).

4. At all times relevant to this Complaint, Respondent has owned and/or operated a municipal separate storm sewer system ("MS4") as that term is defined in 40 C.F.R. § 122.26(b)(8).

5. Respondent's MS4 is located within the geographic boundaries of New Castle, County.

6. New Castle County encompasses a total area of approximately 272,826 acres. According to the County, its population is estimated at 546,076 people.

7. Stormwater from DelDOT's MS4 drains to the numerous creeks and small tributaries of the Delaware Bay, Chesapeake Bay and Piedmont watersheds, which are considered "waters of the United States" within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7); 40 C.F.R. § 232.2; 40 C.F.R. § 122.2.

8. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant (other than dredged or fill material) from a point source into waters of the United States except in compliance with a permit issued pursuant to the National Pollutant Discharge Elimination System ("NPDES") program under Section 402 of the Act, 33 U.S.C. § 1342.

9. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of pollutants from point sources to waters of the United States. The discharges are subject to specific terms and conditions as prescribed in the permit.

10. "Discharge of a pollutant" includes "any addition of any pollutant or combination of pollutants to waters of the United States from any point source." 40 C.F.R. § 122.2.

11. "Storm water" is defined as "storm water runoff, snow melt runoff and surface runoff and drainage." 40 C.F.R. § 122.26(b)(13).

12. The term "municipal separate storm sewer system" ("MS4") includes, "a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains) owned or operated by a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States." 40 C.F.R. § 122.26(b)(8)(i).

13. An NPDES permit is required for discharges from an MS4 serving a population of 250,000 or more, Section 402(p)(2)(C) of the Act, 33 U.S.C. § 1342(p)(2)(C); 40 C.F.R. § 122.26(a), 40 C.F.R. § 122.21.

14. Respondent's MS4 serves a population of at least 250,000 people within New Castle County.

15. Pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b), EPA authorized the Delaware Department of Natural Resources and Environmental Control ("DNREC") to issue NPDES permits on April 1, 1974.

16. DNREC issued to Respondent an NPDES MS4 Discharge Permit No. DE 0051071 which became effective on May 1, 2001 (hereinafter the "MS4 Permit").

17. The expiration date of the MS4 Permit was May 1, 2006; however, the MS4 Permit had been administratively extended to 2013 pending a final decision on the renewal application.

18. An NPDES permit is also required for discharges of storm water associated with industrial activity, as well as for stormwater discharges which DNREC or EPA determine to be a significant contributor of pollutants or that contributes to a violation of a water quality standard. Section 402(p)(2) of the Act, 33 U.S.C. § 1342(p)(2); 40 C.F.R. § 122.26(a), 40 C.F.R. § 122.21.

19. On April 18 and 19, 2013 representatives of EPA conducted an inspection of DelDOT's MS4 program implementation (the MS4 Inspection") in New Castle County.

20. In August 2013, EPA issued Delaware Department of Transportation Municipal Separate Storm Sewer System (MS4) Program Inspection Report (Inspection Report), which included, in addition to general information regarding the DelDOT's MS4 program and history, ten(10) observations regarding the DelDOT's MS4 Program related to the requirements of MS4 Permit (DE 0051071, effective May 1, 2001). The Inspection Report also included seven (7) appendices (exhibit log, photo log, document log, etc.).

21. DelDOT received a copy of the Inspection Report which was sent by mail on September 11, 2013. DelDOT prepared and submitted a response to EPA on September 30, 2013.

22. Based upon the April 18 and 19, 2013 inspection, EPA identified several categories of violations, among the ten (10) observations, which it has concluded were violations of the MS4 Permit and Section 301 of the Act, 33 U.S.C. § 1311. This Consent Order addresses these categories and directs DelDOT to take the corrective action described below to comply with MS4 Permit (DE 0051071, effective May 1, 2001).

23. Part II. of the MS4 Permit requires DelDOT to develop a comprehensive storm water pollution prevention and management program (SWPP&MP) which shall be implemented in accordance with 402(p)(3)(B) of the CWA and the federal NPDES storm water regulations in

40 CFR Part 122.26.

24. Part II.A.3 of the MS4 Permit requires that DelDOT “shall operate and maintain public streets, roads, and highways, in such a manner to reduce, to the maximum extent practicable, the discharge of pollutants. This includes implementing programs...to reduce contaminated storm runoff (i.e., manage and minimize any transport of pollutants) associated with road repair and maintenance activities (i.e., practices to address spill prevention, material management and good housekeeping).” Section XII.A. of the SWPP&MP requires DelDOT to “Develop SWPPPs for all maintenance facilities as per General Permit for Industrial Activities and... Update Pollution Prevention Plans (PPPs) as necessary, including updated site maps.”

25. The EPA inspection team inspected several DelDOT maintenance facilities as part of their inspection. SWPPPs were present at all of the maintenance facilities inspected and the inspection team noted that the SWPPPs for the Middletown, Odessa, Bear and Talley maintenance facilities had last been updated in 2003 even though several changes were made to these facilities and personnel identified in the SWPPP often no longer worked within the maintenance facilities.

26. After the MS4 Inspection, DelDOT submitted updated SWPPPs for the Middletown, Odessa, Bear and Talley maintenance facilities to DNREC on December 20, 2013.

27. Part II.A.3 of the MS4 Permit requires that DelDOT “shall operate and maintain public streets, roads, and highways, in such a manner to reduce, to the maximum extent practicable, the discharge of pollutants. This includes implementing programs... to reduce contaminated storm runoff (i.e., manage and minimize any transport of pollutants) associated with road repair and maintenance activities (i.e., practices to address spill prevention, material management and good housekeeping).”

28. In 2005, DNREC approved DelDOT’s treatment train for its vehicle wash facilities at several DelDOT maintenance yards. At the Kiamensi maintenance yard, washwater is intended to be treated for pollutants associated with oil via a storm drain inlet insert. However, the EPA inspectors found that both washwater and stormwater could easily circumvent the storm drain inlet insert (photograph 22, Appendix 5) and discharge untreated washwater into the stormwater pond and eventually surface waters.

29. Part II.A.3 of the MS4 Permit requires that DelDOT “shall operate and maintain public streets, roads, and highways, in such a manner to reduce, to the maximum extent practicable, the discharge of pollutants. This includes implementing programs, ... to reduce contaminated storm runoff (i.e., manage and minimize any transport of pollutants) associated with road repair and maintenance activities (i.e., practices to address spill prevention, material management and good housekeeping).” Appendix H of the SWPP&MP, Salt Management Plan

for Maintenance Yards states in Section 2.2 "Solid salt stockpiles must not be exposed to rain or snow."

30. During EPA's inspection of the salt storage barn at the Middletown facility the inspectors found salt spilling from the main door and onto a partially paved apron (See Photograph 32 in Appendix 5) which was not under cover and therefore exposed to rain and snow.

31. II.A.9.c of the MS4 permit requires DelDOT to conduct a "prioritized inspection of construction sites and enforcement of control measures." Section VII.A of the SWPP&MP requires the "installation and maintenance of all BMPs during construction activities."

32. Construction site inspection reports reviewed by the EPA inspection team indicate that many of the deficiencies identified in construction site inspections took approximately a month or more to be resolved, and recurred repeatedly throughout the life of the construction site.

33. Based upon the MS4 Inspection, EPA has concluded that Respondent's failures to: 1) ensure that all practicable measures to reduce pollutants from maintenance facilities were taken; 2) update SWPPPs at its maintenance facilities when necessary; 3) ensure the proper operation of treatment facilities; and 4) ensure timely enforcement of control measures; violate the MS4 Permit and Section 301 of the Act, 33 U.S.C. § 1311.

III. ORDER

AND NOW, this 15th day of August, 2014, pursuant to section 309(a) of the Act, 33 U.S.C. § 1319(a), having taken into account the seriousness of the violations and any good faith efforts by Respondent to comply with section 301(a) of the Act, Respondent is hereby ORDERED, pursuant to Section 309(a) to do the following:

34. Respondent shall take all actions necessary to comply with its current MS4 Permit, including:

- a. Develop and implement a plan within 6 months of the effective date of this Order to come into compliance with its current permit, and submit this plan to EPA for comment.
- b. Reinstall the metal strip in the throat of the catch basin at the Kiamensi maintenance yard by August 31, 2014; revise its current "Statewide Vehicle Wash Water Practices for DelDOT Maintenance Yards" by May 2015, and submit this revision to DNREC for approval following its revision; and submit to EPA evidence that these events occurred within four weeks of each completion.
- c. Install a physical barrier at the salt storage barn at the Middletown facility to prevent salt from exiting the main door, with installation to be completed by

August 31, 2014. Submit evidence of this completion to EPA within four weeks of its completion.

35. All documents required by Paragraph 34 of this Section shall be accompanied by a certification signed by a responsible municipal officer, as defined in 40 CFR § 122.22(d), that reads as follows:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Signed _____
Title _____

All documents required herein shall be submitted to:

Peter Gold
Enforcement Officer
NPDES Enforcement Branch
Mail Code (3WP42)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

IV. GENERAL PROVISIONS

36. Issuance of this Consent Order is intended to address the violations described herein. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. Further, EPA reserves any existing rights and remedies available to it under the CWA, 33 U.S.C. §1311, et seq., the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction. Further, EPA reserves any rights and remedies available to it under the CWA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this Consent Order, following its effective date (as defined below).

37. This Consent Order does not constitute a waiver or modification of the terms or conditions of DelDOT's MS4 permit. Compliance with the terms and conditions of this Order does not relieve the Respondent of its obligations to comply with any applicable federal, state, or local law or regulation.

38. For the purposes of this proceeding, DelDOT neither admits nor denies the factual allegations and conclusions of law set forth in this Consent Order.

39. Respondent waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Order on Consent, including any right of judicial review pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

40. DelDOT has made significant progress in all aspects of its NPDES program since the MS4 Inspection. This settlement is intended to encourage continued improvements commensurate with the goals of a quality assurance audit.

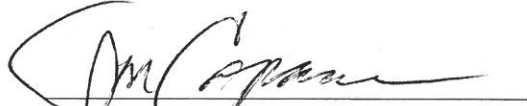
41. By entering into this Consent Order, DelDOT does not admit any liability for the civil claims alleged herein.

V. EFFECTIVE DATE

This ORDER is effective after receipt by Respondent of a fully executed document.

SO ORDERED:

Date: 8/15/2014


Jon Capacasa
Director, Water Protection Division
U.S. EPA Region III

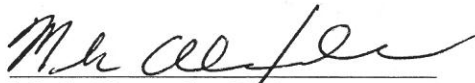
AGREED TO:

For Delaware Department of Transportation:

Date: 8/01/14


Robert McCleary, P.E.
Chief Engineer

Date: 8/5/14


Mark Alexander, P.E.
Director of Maintenance and Operations